

BEFORE THE  
POSTAL RATE COMMISSION

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In the Matter of: :

RENEWAL OF EXPERIMENTAL : Docket No. MC99-1

CLASSIFICATION AND FEES FOR :

WEIGHT-AVERAGED NONLETTER- :

SIZE BUSINESS REPLY MAIL, :

1999 :

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Third Floor Hearing Room  
Postal Rate Commission  
1333 H Street, N.W.  
Washington, D.C. 20268  
Tuesday, April 6, 1999

The above matter came on for prehearing conference, pursuant to notice, at 11:03 a.m.

BEFORE:

HON. GEORGE A. OMAS, PRESIDING OFFICER AND  
COMMISSIONER

HON. EDWARD J. GLEIMAN, CHAIRMAN

HON. RUTH W. GOLDWAY, COMMISSIONER

HON. DANA B. COVINGTON, COMMISSIONER

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# C O N T E N T S

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
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| NONE    |        |       |          |         |

| DOCUMENTS TRANSCRIBED INTO THE RECORD: | PAGE |
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| NONE                                   |      |

# E X H I B I T S

| EXHIBITS AND/OR TESTIMONY                                     | IDENTIFIED | RECEIVED |
|---|------------|----------|
| Direct Testimony and Exhibits<br>of James M. Kiefer, USPS-T-1 | 15         | 15       |

## P R O C E E D I N G S

[11:03 a.m.]

COMMISSIONER OMAS: Good morning and welcome to the prehearing conference on Docket MC99-1, which will now come to order.

I am George Omas and I will be serving as Presiding Officer. Joining me on the bench are the Commission's Chairman, Ed Gleiman, and two of my other colleagues -- they haven't arrived yet -- Commissioner Goldway and Commissioner Covington. Vice-Chairman Trey LeBlanc had a family emergency. He will be receiving a copy of today's transcript so he will be up to date on things as they stand.

Our tentative agenda for this morning's prehearing conference has been distributed. Additional copies are available if you need one. As the agenda indicates, we are here today to mainly discuss the procedures in Docket MC99-1, the renewal of experimental classification and fees for weight-averaged nonletter-size business reply mail.

In brief, this case involves the Postal Service's request for a limited extension of an experimental accounting method for certain nonletter-size business reply mail pieces. This experiment was authorized as a result of Docket Number MC97-1. It has been underway since June 8th of 1997 and will expire on June 7th, 1999.

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1           The extension, if approved, would allow  
2   consideration of Docket Number MC99-2, the Postal Service's  
3   request to establish a permanent fee system for bulk  
4   non-letter size business reply mail. The extension is  
5   requested to allow the Service to resolve some outstanding  
6   details related to the weight-averaging accounting method  
7   without disrupting its operation or altering the current fee  
8   schedule.

9           The companion case, Docket Number MC99-2,  
10   addresses permanent classification status for the  
11   weight-averaging option under a somewhat different fee  
12   schedule. For the record, the scope of the original  
13   experiment also allowed the Service to test an accounting  
14   method referred to reverse manifesting. Given certain  
15   developments, the Service is not asking for an extension of  
16   this aspect of the experiment, thus authority to author  
17   reverse manifesting will expire in June as originally  
18   scheduled.

19           In a few minutes I will ask those of you who are  
20   entering official appearance to identify yourself for the  
21   record but first I would like to mention several preliminary  
22   matters.

23           At the top of the list is the fact that this is my  
24   first time up here in the role of Presiding Officer, so I  
25   may be improvising a little bit when it comes to hearing

1 room protocol. Luckily, this case seems to have attracted a  
2 seasoned set of participants, so that should help me a great  
3 deal. Also, I will be relying a great deal on Chairman  
4 Gleiman to assist. His ability to keep Docket Number R97-1  
5 on track is a model example of how to run a proceeding, and  
6 I can use all the help I can get at this point.

7 Next a brief word about the order of business.  
8 Given that the Commission has authorized settlement  
9 negotiations the prospects for success in that endeavor are  
10 a primary consideration here, therefore our most important  
11 business today may be the status report from the settlement  
12 coordinator, as that report may generate several issues that  
13 need to be addressed this morning.

14 I intend to allow participants wide latitude to  
15 raise any relevant issues today, so our agenda is really  
16 just a general guide. Please do not hesitate to raise any  
17 issues and if necessary I will ask for written views before  
18 making rulings.

19 With that said, I would now like to call the role  
20 of participants in this case. The Postal Service.

21 MR. TIDWELL: Michael Tidwell on behalf of the  
22 United States Postal Service.

23 COMMISSIONER OMAS: Advertising Mail Marketing  
24 Association?

25 [No response.]

1 COMMISSIONER OMAS: Brooklyn Union Gas Company.

2 MR. HALL: Michael Hall.

3 COMMISSIONER OMAS: Douglas Carlson, District  
4 Photo, Incorporated?

5 MR. OLSON: Commissioner, William Olson  
6 representing District, and also here in the hearing room  
7 with me today are John Miles and Jack Callender of our firm  
8 and Alan Woll of our firm will also be involved in the case,  
9 and if it is possible I could identify our other clients to  
10 save some time.

11 COMMISSIONER OMAS: I appreciate that.

12 MR. OLSON: In addition to District, we have York  
13 Color Labs, which is formerly known as Nashua Corporation in  
14 prior dockets and we have Mystic Color Labs and Seattle Film  
15 Works, and if you put the initials together in that order it  
16 comes out either DYMS (dms) -- which we are hoping Mr.  
17 Tidwell will not call us -- or DYMS (dye'-mus), which we  
18 would suggest as an alternative for him.

19 COMMISSIONER OMAS: Thank you, Mr. Olson.

20 Keyspan Gas East Corporation?

21 MR. HALL: Yes, Commissioner Omas. This is  
22 Michael Hall again. In addition to representing Brooklyn  
23 Union and Keyspan Gas East Corporation, I also represent the  
24 Long Island Power Authority.

25 COMMISSIONER OMAS: Thank you. David Popkin?



1 Time Warner?

2 [No response.]

3 COMMISSIONER OMAS: Is there anyone else who would  
4 like to be recognized?

5 [No response.]

6 COMMISSIONER OMAS: The Office of Consumer  
7 Advocate?

8 MR. RICHARDSON: Kenneth E. Richardson, and I  
9 would like to enter the appearance of Ted P. Gerarden,  
10 Director of the Office of the Consumer Advocate.

11 COMMISSIONER OMAS: Thank you, Mr. Richardson.

12 At this point I would like to move directly to a  
13 discussion, the potential for a settlement in MC99-1, the  
14 extension of the ongoing experiment.

15 I will briefly review things as they stand from  
16 the Commission's perspective. Order Number 1223 granted the  
17 Service's request that this case proceed at least initially  
18 under the Commission's rule that allows participants to work  
19 out matters informally in lieu of a formal hearing. The  
20 Commission appointed Postal Service counsel as the  
21 settlement coordinator and agreed to set aside the hearing  
22 room earlier this morning so that participants could meet  
23 and talk things over.

24 That brings us to this conference and a chance for  
25 Mr. Tidwell to tell us how the negotiations are going. I

1 would appreciate it if you would begin by noting for the  
2 record whether the anticipated meeting took place this  
3 morning and who attended. After that, Mr. Tidwell, you have  
4 free reins.tt

5 MR. TIDWELL: Good morning, Mr. Presiding Officer.  
6 The Postal Service did in fact meet this morning with  
7 several parties -- DYMS -- District, Mystic, York and  
8 Seattle; the Office of Consumer Advocate; and the counsel  
9 for Keyspan, Brooklyn Union, and Long Island Power were in  
10 attendance. I believe I have covered everyone who was here.

11 We would like to thank the Commission for making  
12 available its hearing room for the purposes of this  
13 morning's conference. This morning's conference was a very  
14 productive session. The parties were all very open and  
15 frank in expressing their desire to see this case resolved  
16 in a manner that respected everyone's due process rights and  
17 provided the Commission with the best possible record upon  
18 which to base a recommended decision.

19 We find that there are still some outstanding  
20 issues that the parties would like to seek clarification and  
21 resolution of in the days and weeks ahead and the Postal  
22 Service looks forward to working with the parties and moving  
23 toward resolution of those issues.

24 At this time the parties reached a consensus that  
25 we probably should not proceed today with a submission of

1 the proposed stipulation and agreement because we might want  
2 to tinker with that document and improve upon it some what  
3 in the days and weeks ahead and we are going to proceed with  
4 further discovery. The parties have even gone so far as to  
5 tentatively set up a date for a technical conference with  
6 one of the Postal Service's witnesses in MC99-2, Witness  
7 Schenk, the cost witness, in the hopes that a technical  
8 conference with her, informal technical conference among the  
9 parties seeking clarification of her testimony in that  
10 proceeding could bring us much closer to a resolution in  
11 MC99-1.

12 Again the Postal Service is thankful to the OCA  
13 and the other parties for their participation this morning.  
14 We think we are on a road that will put us in a position to  
15 come back to the Commission with further developments in the  
16 near future and we will be submitting a proposal for a  
17 schedule date for further proceedings in due course.

18 COMMISSIONER OMAS: Thank you, Mr. Tidwell. Does  
19 anyone else care to comment on Mr. Tidwell's report?

20 MR. RICHARDSON: Mr. Presiding Officer, I would  
21 just like to add that OCA is hopeful and does anticipate  
22 that based on the responses we do expect to get from our  
23 discovery requests that we have already sent to the Postal  
24 Service and the ones that we will submit in the next day or  
25 two that we can resolve this proceeding with a stipulation

1 and agreement, and based on the evidence we have so far  
2 that's been filed by the Postal Service, there is every  
3 likelihood that we can reach some type of agreement.

4 COMMISSIONER OMAS: Thank you, Mr. Richardson, and  
5 Mr. Tidwell, thank you as well.

6 Well, it seems at this point that it will be some  
7 time before we will know whether settlement is really  
8 possible.

9 Before proceeding any further I think it would be  
10 useful to address the Service's request made at the time it  
11 submitted its filing. That contains material entered into  
12 the record of Docket Number MC99-1. This request was  
13 identified in Order 1233 and participants were notified of  
14 the Commission's intent to grant the Service's request  
15 absent objections from participants.

16 There has in fact been one objection. The OCA  
17 objected to one item in the proposed stipulation and  
18 agreement. I will discuss this matter in more detail  
19 shortly. However, before doing so I would like to note that  
20 the Staff has prepared a certified copy of the record in  
21 Docket MC97-1 to assist the conferees since it included  
22 material referenced in the Service's Docket MC99-1, the  
23 request and testimony of -- the original request and the  
24 testimony, excuse me, of Witness Kiefer.

25 I have reviewed the certified copy and made it

1 available to conferees this morning. Mr. Tidwell, as  
2 spokesman for the conferees, is everything in order with  
3 that certified record?

4 MR. TIDWELL: Mr. Presiding Officer, yes, it is.

5 COMMISSIONER OMAS: Thank you. With that being  
6 the case, let's discuss other material the Service requested  
7 to be entered into the proceedings.

8 Mr. Tidwell?

9 MR. TIDWELL: Mr. Presiding Officer, the Postal  
10 Service has available two copies of the direct testimony of  
11 Witness Kiefer in Docket Number MC99-1 that has been  
12 designated a USPS-T-1. We would propose that this testimony  
13 be entered into the record in this proceeding.

14 We have brought along with us a declaration from  
15 Witness Kiefer attesting to the testimony for that purpose,  
16 and if it pleases the Chair we would at the appropriate time  
17 today like to move that the testimony be entered into the  
18 record.

19 COMMISSIONER OMAS: Thank you, Mr. Tidwell.

20 The OCA objected to the inclusion of the proposed  
21 stipulation agreement. Does OCA care to comment at this  
22 time?

23 MR. RICHARDSON: Well, we continue to hold the  
24 view that we stated in our comments that were filed  
25 yesterday, Mr. Presiding Officer, and Mr. Tidwell indicated

1 we had hoped that we could reach agreement on an adjustment  
2 to the stipulation agreement before it is filed, something  
3 that would be more meaningful and useful for purposes of the  
4 record and so we see no advantage at this time of entering  
5 the stipulation agreement into the record, and in speaking  
6 to Mr. Tidwell during the settlement conference I understand  
7 that he is withdrawing that request.

8 COMMISSIONER OMAS: Thank you, Mr. Richardson. I  
9 will reserve acting on inclusion of the contested  
10 stipulation and agreement. However, I believe that other  
11 material can be entered into the record at this time.

12 Mr. Tidwell, would you identify this again?

13 MR. TIDWELL: Yes. The Postal Service moves that  
14 the direct testimony of James M. Kiefer on behalf of the  
15 United States Postal Service, which has been designated as  
16 USPS-T-1 for purposes of Docket Number MC99-1, be entered  
17 into the evidentiary record.

18 I am prepared to present two copies of that  
19 testimony to the Reporter along with a declaration from  
20 witness Kiefer dated today.

21 COMMISSIONER OMAS: Thank you, Mr. Tidwell.

22 Hearing no objection, the material that has been  
23 identified by Mr. Tidwell, with the exception of the  
24 proposed stipulation and agreement, will be entered into the  
25 record for this proceedings. Mr. Reporter, this material

1 will be transcribed.

2 [Direct Testimony and Exhibits of  
3 James M. Kiefer, USPS-T-1, was  
4 received into evidence, but not  
5 transcribed into the record.]

6 COMMISSIONER OMAS: Taking care of this matter  
7 reminds me that I want to caution participants about the  
8 potential confusion that concurrent cases may pose in terms  
9 of developing the record.

10 Officially there are two distinct records,  
11 although there will be some cross-references that are  
12 unavoidable, so I ask that all documents be captioned with a  
13 clear indication of whether they belong to MC99-1 or MC99-2  
14 or both.

15 There are several pending motions. There is also  
16 one proposed schedule put forth by OCA. I will be issuing  
17 rulings on these motions in the near future.

18 As to the proposed schedule, I would like to note  
19 the Commission's interest in encouraging settlement.  
20 Therefore, I believe we would prefer to provide another  
21 opportunity for a settlement conference. Instead of setting  
22 this matter for hearing at this time, I will open the floor  
23 for discussion at this point.

24 Mr. Tidwell.

25 MR. TIDWELL: Mr. Presiding Officer, earlier today

1 the parties were able to reach an agreement concerning a  
2 technical conference involving Postal Service Witness  
3 Schenk. That conference has been set for the 20th of this  
4 month.

5 It is hoped and the Postal Service is confident  
6 that any outstanding material issues related to this -- to  
7 MC99-1 may resolved by that date and that the parties might  
8 need only a short interval thereafter to continue  
9 discussions on a stipulation and agreement and so it would  
10 seem that an appropriate date perhaps for another prehearing  
11 conference would be I would say within a week of the 20th of  
12 April.

13 COMMISSIONER OMAS: Well, it seems as though there  
14 may be an opportunity for a settlement in this case, as you  
15 reported to us, and does OCA agree?

16 MR. RICHARDSON: OCA would support what Mr.  
17 Tidwell has said, although it may not even be necessary to  
18 set a date at this point for another prehearing conference  
19 pending the outcome of settlement discussions and the filing  
20 of a document by the parties as to the outcome of those  
21 settlement discussions notifying you where we stand and  
22 perhaps what appropriate procedures might fit in with our  
23 discussions.

24 COMMISSIONER OMAS: Well, fine, so then you'll  
25 notify the Chair as to what --



1 MR. TIDWELL: Mr. Presiding Officer, the Postal  
2 Service is willing to take on the responsibility of filing a  
3 report with the Commission indicating any further  
4 developments or progress that's been made, and the Postal  
5 Service would volunteer to provide such a report, file such  
6 a report next Friday, and perhaps on the basis of that  
7 report we may be in a better position to know how close we  
8 may be to setting a date for the next conference.

9 COMMISSIONER OMAS: Yes. Okay, that's fine.

10 One question I have is about data collection  
11 during the extension if one is approved. Could you clarify  
12 the Service's intention in this regard, Mr. Tidwell?

13 MR. TIDWELL: Yes. It was the Postal Service's  
14 intention in developing -- in requesting the extension to  
15 provide itself with an environment during which it could  
16 essentially polish the weight-averaging program to a point  
17 where it would be ready for permanent implementation.

18 The experiment -- as we see it, one of the primary  
19 purposes of an experiment is to conduct the sort of cost  
20 data that would support a decision within the Postal Service  
21 whether to pursue the establishment of a classification or a  
22 fee on a permanent basis, and we think that in the main that  
23 has been accomplished through the work that's been done in  
24 connection with the ongoing experiment. All that remains to  
25 be done for the most part from the Postal Service's point of

1 view is resolving some administrative issues regarding  
2 management of the weight-averaging program in the long term  
3 and resolving of some technical computer-related issues that  
4 will allow us to have a computerized system that will meet  
5 all of our internal requirements.

6           Given that that is going to be the prime focus of  
7 the Postal Service during the extension period, we have some  
8 reservations about whether it would be necessary for the  
9 Postal Service to continue to collect the body of data that  
10 would ordinarily go into supporting a decision regarding  
11 permanent establishment, since we've essentially collected  
12 the data for that purchase already and all that remains are  
13 a number of administrative tasks for which it seems that  
14 there would not be a whole lot of utility in collecting a  
15 whole lot of data about what happens between June and the  
16 date on which we flip the switch to go permanent.

17           I mean, what's going to happen in general terms is  
18 that the people who are working on computer issues will  
19 continue to work on them. The people who are working on the  
20 transfer of responsibilities from the experiment from the  
21 marketing systems department to the appropriate  
22 operation/finance functions will be meeting and resolving  
23 those issues. And we're just not -- we're just not certain  
24 that there would be much utility in collecting periodic cost  
25 information, since we're going to be litigating or at least

1 discussing the potential for settlement on cost data that's  
2 been presented in MC99-2.

3 And so the Postal Service would like to emphasize  
4 that its view is that there ought not be an imposition of a  
5 further obligation to collect the sort of data that we  
6 collected at MC97 -- as a result of MC97-1, and we would ask  
7 the Commission to support our motion for the waiver that we  
8 requested on rule 67.

9 COMMISSIONER OMAS: Thank you, Mr. Tidwell.

10 Now we will turn briefly to plans for Docket  
11 Number MC99-2. No procedural dates have been set in that  
12 case yet, but the 10-month clock is ticking. And as with  
13 MC99-1, there may be possibility for settlement, and MC99-2  
14 as well.

15 Mr. Tidwell, have you and other participants  
16 discussed that possibility?

17 MR. TIDWELL: Mr. Presiding Officer, yes, we did.  
18 And we believe that some progress can be made in resolving  
19 issues, and in that case informally. The OCA has circulated  
20 to the parties this morning a proposed schedule that the  
21 parties want to reflect on, for in fact we are going to meet  
22 at the conclusion of today's prehearing conference to  
23 discuss the schedule that the OCA proposed.

24 We're going to work on two tracks essentially.  
25 One, we're going to vigorously pursue settlement among the

1 parties, at the same time recognizing that if settlement  
2 should not bear fruit, we're going to need a schedule. The  
3 OCA has proposed one for our consideration. We discussed it  
4 this morning and decided that perhaps what we ought to do is  
5 discuss it further and to formally submit a schedule  
6 reflecting a consensus of the parties the day after  
7 tomorrow, file it with the Commission on this Thursday.

8 COMMISSIONER OMAS: Also, can discovery proceed  
9 while negotiations are going on in the extension?

10 MR. TIDWELL: It is our intention to proceed with  
11 negotiations and discovery simultaneously.

12 COMMISSIONER OMAS: Good. Thank you, Mr. Tidwell.

13 Is there any reason for discovery to be extended  
14 beyond early May?

15 MR. TIDWELL: The Postal Service can think of  
16 none.

17 COMMISSIONER OMAS: Are there any extended periods  
18 when the Postal Service witness will not be available?

19 MR. TIDWELL: With respect to the witnesses, the  
20 answer is that the witnesses are available at all times  
21 during the foreseeable future.

22 COMMISSIONER OMAS: Would anyone else like to be  
23 recognized at this point? Mr. Richardson.

24 MR. RICHARDSON: Mr. Presiding Officer, I am in  
25 concurrence with Mr. Tidwell's comments and we are working

1       towards some proposed dates that we worked out in OCA that  
2       we would submit to you by Thursday or Wednesday and as to  
3       the termination date of discovery in early May, I believe  
4       our proposed date was more towards the middle of May, and I  
5       don't have my own proposal in front of me but I believe it  
6       was around the 15th. It was originally the 17th but in our  
7       discussions we were discussing moving it even further down,  
8       to May 31st, for the end of discovery.

9               Even with that date, I believe there would be  
10       plenty of time for the rest of the Commission's procedures  
11       and to conclude the proceeding within a six or seven month  
12       period if it needs to go that far.

13              COMMISSIONER OMAS: Thank you, Mr. Richardson, for  
14       those indications.

15              I will take a closer look at the Commission's  
16       calendar and see what can be done about scheduling.

17              Are there any other matters that should be brought  
18       up today?

19              MR. RICHARDSON: Mr. Presiding Officer, I do have  
20       one matter I want to raise, which I would hope you would be  
21       able to rule on from the bench regarding OCA access to the  
22       Schenk work papers in the previous docket, MC97-1, which  
23       were filed as confidential data in that case.

24              During the settlement discussions this morning I  
25       discussed this with the parties and Mr. Tidwell has no

1 objection, nor do the other participants object.

2 We would like to have access similar to the access  
3 you granted in your ruling in this case, MC99-1/1. You may  
4 recall we, OCA, filed a motion for expedited access to the  
5 Schenk work papers in this docket. Similarly in Docket  
6 Number MC97-1 there were also confidential work papers filed  
7 by Witness Schenk which were under a confidential protective  
8 order at that time.

9 It is our understanding that they are still in the  
10 Commission files and under the same protective conditions  
11 which you granted in MC99-1 last week, we would request  
12 access to the MC97-1 work papers upon a certification which  
13 we would file with the administrator and that would enable  
14 us to receive access to those documents without requiring  
15 the Postal Service to refile those documents.

16 If you could rule from the bench granting this  
17 oral motion for access, that would be our request.

18 COMMISSIONER OMAS: Are there any other comments  
19 to OCA's request?

20 MR. TIDWELL: The Postal Service would simply note  
21 that it is in full support of the request.

22 COMMISSIONER OMAS: Without objection, we  
23 approve -- the bench approves this.

24 I would like to thank you all today, especially  
25 for bearing with me this -- oh, excuse me. Mr. Hall?

1           MR. HALL: Yes, thank you very much, Commissioner  
2 Omas.

3           I would like you also to rule on one minor  
4 procedural matter, if you can, from the bench. In our  
5 notice of intervention on behalf of three parties, we  
6 designated four persons to receive service. Questions have  
7 been raised whether this is consistent with Rule 20A, which  
8 governs service on limited participators, which we are in  
9 this proceeding.

10           We believe that what we did was consistent with  
11 the rule since we have in essence two separate parties --  
12 Long Island Power Authority is one party and then the two  
13 Brooklyn Union companies as another party -- and we thought  
14 it was consistent with the spirit of the Commission's rule  
15 to combine them in one notice of intervention, although we  
16 could have done it separately and there would have been no  
17 question, so if you can clarify that this was appropriate,  
18 that would be fine. Otherwise, I would ask that you grant  
19 waiver of the rule to allow us to designate these parties  
20 for service, and I have discussed the matter with the other  
21 parties here today and they have no objection to a grant of  
22 the relief I am requesting.

23           COMMISSIONER OMAS: If there is no objection, we  
24 agree to that.

25           MR. HALL: Thank you.

1           COMMISSIONER OMAS: I would like to thank you all  
2 again for bearing with me today and on behalf of the  
3 Commission I would like to express my appreciation for all  
4 the efforts that have gone into exploring the settlement.

5           However, before we close, I would like to clarify  
6 one thing for the record, that Witness Kiefer's testimony  
7 offered by Mr. Tidwell will not be transcribed into the  
8 record, as is the policy of the Commission or the practice  
9 of the Commission with testimony with the USPS witnesses.

10           I also appreciate my colleagues' support and the  
11 participants' cooperation in this matter.

12           Now having come to the end of today's business,  
13 this prehearing conference is adjourned, and thank you for  
14 bearing with me.

15           [Whereupon, at 11:38 a.m., the prehearing  
16 conference was concluded.]

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